

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Engineering and Construction Management

**AGENDA DATE:** June 12, 2012

**CONTACT PERSON NAME AND PHONE NUMBER:** R. Alan Shubert, P.E., City Engineer (X4423)

**DISTRICT(S) AFFECTED:** 1

**SUBJECT:**

That the City Engineer notify G. Contek, L.L.C. and Suretec Insurance Company that the City of El Paso is terminating Solicitation No. 2011-027 to G. Contek, L.L.C. for the construction of a project known as Westside Community Dog Park, pursuant to General Conditions 6.9 Right of Owner to Terminate the Contract, due to default by G. Contek, L.L.C. and that the termination shall become effective immediately upon delivery of notice.

The City Engineer shall file a claim with Sureteck Insurance Company, as the surety for G. Contek, L.L.C., notifying Suretec Insurance Company of the City of El Paso's intent to look to the surety for performance in accordance with the terms and conditions of Solicitation No. 2011-027 to G. Contek, L.L.C. for the construction of a project known as Westside Community Dog Park.

The City Manager is authorized to sign any take over agreements or related documents upon approval by the City Attorney's Office and the City Engineer and to take any actions necessary to accomplish the intent of the Resolution,

**BACKGROUND / DISCUSSION:**

On November 30, 2010, the City of El Paso awarded Solicitation No. 2011-027 to G. Contek, L.L.C. for the construction of a project known as the Westside Community Dog Park.

Between June 22, 2011 and August 3, 2011 there were oral and email communications back and forth between the Contractor and the City wherein the Contractor agreed to replace dead trees and repair four defective gates

Contractor has failed to make satisfactory arrangements to comply with the one year warranty provisions and replace the dead trees and repair the defective gates.

**PRIOR COUNCIL ACTION:** N/A

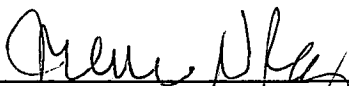
**AMOUNT AND SOURCE OF FUNDING:** N/A

**BOARD / COMMISSION ACTION:** N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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(If Department Head Summary Form is initiated by Purchasing, client department should sign also)  
Information copy to appropriate Deputy City Manager

## **RESOLUTION**

**WHEREAS**, on November 30, 2010, the City of El Paso (the "City") awarded Solicitation No. 2011-027 to G. Contek, L.L.C. (the "Contractor") for the construction of a project known as the Westside Community Dog Park; and

**WHEREAS**, on January 24, 2011, a Notice to Proceed was issued; and

**WHEREAS**, on May 12, 2011, a punch list of items to be completed or corrected was provided to the Contractor; and

**WHEREAS**, on June 22, 2011, a Certificate of Final Completion was issued for the project and provided to the Contractor stating that all the punch list items had been completed; and

**WHEREAS**, pursuant to the plans, specifications and contract documents, Contractor provided a one year warranty on material, equipment and workmanship, including a one year warranty for all plants; and

**WHEREAS**, between June 22, 2011 and August 3, 2011, there were oral and email communications back and forth between the Contractor and the City wherein the Contractor agreed to replace dead trees and repair four defective gates; and

**WHEREAS**, Contractor failed to replace the dead trees and failed to repair the four defective gates; and

**WHEREAS**, on October 18, 2011, a certified letter was sent to Contractor requesting that Contractor replace 11 dead trees and repair four defective gates, the certified letter was returned unclaimed; and

**WHEREAS**, on November 8, 2011, an attempt was made to hand deliver a notice to Contractor to replace the dead trees and repair the defective gates, the Contractor's office was closed;

**WHEREAS**, since August 4, 2011, there has been no communication between the City and Contractor; Contractor has failed to respond to phone calls, email, or written communication; and

**WHEREAS**, Contractor has failed to comply with the one year warranty provisions; and

**WHEREAS**, on May 22, 2012, the City sent a certified letter to Contractor giving Contractor notice of the City's intent to terminate the contract for default if, within 10 (ten) days from receipt of notice, Contractor did not make satisfactory arrangements to comply with the one year warranty provisions and replace the dead trees and repair the defective gates, the certified letter was returned unclaimed; and

**WHEREAS**, Contractor has failed to respond to the May 22, 2012 notice; and

**WHEREAS**, pursuant to the Contract between the City and Contractor, General Conditions 6.9, Right of Owner to Terminate the Contract, the City possesses the right to terminate the Contract in the event of default by the Contractor and a failure to cure such default after receiving notice thereof.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO THAT:**

1. The City Engineer notify G. Contek, L.L.C. and Suretec Insurance Company that the City of El Paso is terminating Solicitation No. 2011-027 to G. Contek, L.L.C. for the construction of a project known as Westside Community Dog Park, pursuant to General Conditions 6.9, Right of Owner to Terminate the Contract, due to default by G. Contek, L.L.C. and that the termination shall become effective immediately upon delivery of notice.
2. The City Engineer shall file a claim with Suretec Insurance Company, as the surety for G. Contek, L.L.C., notifying Suretec Insurance Company of the City of El Paso's intent to look to the surety for performance in accordance with the terms and conditions of Solicitation No. 2011-027 to G. Contek, L.L.C. for the construction of a project known as Westside Community Dog Park.
3. The City Manager is authorized to sign any take over agreements or related documents upon approval by the City Attorney's Office and the City Engineer and to take any actions necessary to accomplish the intent of the Resolution.

**PASSED AND APPROVED THIS** \_\_\_\_ day of \_\_\_\_\_, 2012.

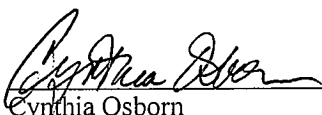
**CITY OF EL PASO**

**ATTEST:**

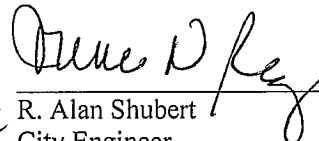
\_\_\_\_\_  
John F. Cook  
Mayor

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
for \_\_\_\_\_  
R. Alan Shubert  
City Engineer